ELIZABETH CHIEW YEE FUNG & ORS

v.

LEONG FOOK NGEN & ORS

HIGH COURT SABAH & SARAWAK, TAWAU
RICHARD MALANJUM J
[CIVIL SUIT NO: 328-1987]
20 FEBRUARY 2001

LAND LAW: *Indefeasibility of title and interests - Forged transfer - Whether forged instrument capable of conveying title to subsequent purchaser - National Land Code 1965, s. 340(2)(b), (3) - Whether necessary to prove that defendant knew of forgery*

LAND LAW: *Indefeasibility of title and interests - Forged transfer - National Land Code 1965, s. 340(2)(b)*

EVIDENCE: *Standard of proof - Forgery of signature - Whether on balance of probabilities*

The plaintiff's case was that a 1/10 undivided share ('the share') in the disputed land belonged to the estate of one Johnny Chiew ('the deceased') who passed away in 1980. The share however was now registered in the name of the defendant. The plaintiff contended that the share had belonged to one Liew Ah Tai who transferred it to the deceased for love and affection. The deceased's signature was then allegedly forged and the share transferred to one Liew Fook Ngen and then finally to the defendant.

The defendant argued that it was a *bona fide* purchaser for valuable consideration without notice and that it had no knowledge of any alleged forgery. The issues for consideration were: (i) whether the plaintiff had proved that the signature of the deceased was in fact forged; (ii) whether the defendant knew of such forgery on or before the transfer of the said share; and (iii) whether a forged instrument of transfer conveys any title, interests or rights to a purchaser upon registration.

Held:

[1a] The standard of proof required to establish forgery is proof on a balance of probabilities – that is the civil standard of proof.

[1b] Where forgery is alleged, the facts and circumstances in relation to the part played by the party alleged to have been involved in the forgery should be taken into account.

[1c] Considering all the evidence including those of the expert and of the daughter of the deceased, the purported signature of the deceased was in fact forged. Furthermore, there was no serious challenge from the defendant to the allegation that the purported signature of the deceased was forged.

[2a] On the evidence there was no dispute as to the involvement of the managing director of the defendant ('David Wang') in the transfer of the share.

[2b] The defendant thus through the knowledge of David Wang, must have known or ought to have known that the purported signature of the deceased was forged.

[3a] Under the Land Ordinance of Sabah, there is no provision on indefeasibility of title on registration similar to that found in the National Land Code 1965.

[3b] However, since the signature of the deceased was in fact forged and that the defendant must have known or ought to have known of the forgery, the instrument therefore did not convey any title, interests or rights to the subsequent registered owners.

[3b] Since the defendant had the knowledge or ought to have known of the forgery of the purported signature, the defendant was thus no longer entitled to rely on the doctrine of *bona fide* purchaser for valuable consideration.

[Judgment for plaintiff.]

Case(s) referred to:

Adorna Properties Sdn Bhd v. Boonsom Boonyanit [2001] 2 CLJ 133 ***(refd)***
Boonsom Boonyanit v. Adorna Properties Sdn Bhd [1997] 3 CLJ 17 ***(refd)***
Borneo Housing Mortgage Finance Bhd v. Times Engineering Bhd [1996] 2 CLJ 561 ***(foll)***
Chu Choon Moi v. Ngan Sew Tin [1986] 1 MLJ 34 ***(refd)***
Dr Shanmuganathan v. Periasamy Sithambaram Pillai [1997] 2 CLJ 153 ***(refd)***
Pekan Nenas Industries Sdn Bhd v. Chang Ching Chuen & Ors [1998] 1 CLJ 793 ***(refd)***

Legislation referred to:

National Land Code 1965, s. 340(3)

For the plaintiffs - Victor Chong; M/s Poh & Victor Chong
For the 3rd defendants - Liew Chiew Chai; M/s CC Liew & Co

Reported by Mariette Peters-Goh

JUDGMENT

Richard Malanjum J:

Introduction

In this action the plaintiffs pray for the following relief, namely:

(1) Damages for fraud;

(2) A declaration that the signature of Johnny Chiew Tet Ming in the Memorandum of Transfer (MTI) was a forgery;

(3) A declaration that the interests subsequently registered as Memorial Nos. 30187763, 30188261 and 30192346 on CL 138488, Lahad Datu are null and void;

(4) An Order that the Collector of Land Revenue cancel the said Memorial Nos. 30187763, 30188261 and 30192346 entered on the title deed CL 138488, Lahad Datu;

(5) All other necessary accounts, directions, declarations, orders and enquiries;

(6) Further or other relief; and

(7) Costs.

All the original defendants resisted the claim and basically the defence filed for the 3rd defendant in particular was that it was a *bona fide* purchaser for value without notice and that it had no knowledge of the forgery as alleged.

Now this case has a chequered history. It first came up for hearing in 1993 but after the first witness for the original plaintiffs was called it had to be adjourned on the application of the original plaintiffs since they could not get their other witnesses. The application was duly granted with liberty to apply for reinstatement once the parties were ready. But such application was only made in 1999 and hence the hearing resumed with the original 2nd to the 6th plaintiffs withdrawing as parties leaving only the 1st plaintiff to pursue the claim. Thus, for the purpose of this judgment it is to be understood that the plaintiff means the original first plaintiff. The former judge that initially heard this case was also transferred to another station and hence the duty fell upon me to continue the hearing when there was no objection of any sort from the parties involved. The other new development in the case was that the 1st defendant had passed away and the 2nd defendant was therefore substituted as the personal representative of her estate. But having settled that issue the 2nd defendant proceeded to withdraw the defences for both of them thereby leaving only the 3rd defendant. As such the matter left to be determined is only between the plaintiff and the 3rd defendant that will be referred to in this judgment as the defendant.

The Plaintiff's Case

It is the plaintiff's case that the 1/10 undivided share (the said share) in a parcel of land contained in Country Lease No. 115138488 (the said land) situated in the District of Lahad Datu is still in law belonging to the estate of the late Johnny Chiew Tet Ming (the deceased) who passed away on 30 April 1980 although it is now registered under the name of the defendant. It is the evidence of PW5 – Elizabeth Chiew that her father never transferred the said share to one Liew Ah Tai and that the alleged signature of the deceased in the purported Memorandum of Transfer (exh. P3a) was forged. And PW6 – Liew Fook Ngen testified that David Wang, the former Managing Director of the defendant, told him that it was him (David Wang) who forged the signature of the deceased. According to the PW6 David Wang wanted the said share in order to proceed with the development of the said land. So the plan was to transfer the said share firstly to Liew Ah Tai since she was the former owner prior to transferring it to the deceased for love and affection. Thereafter the said share was transferred to PW6 and finally to the defendant. As for the evidence of PW2 – Chong Hen Fui, he said that he was assigned by David Wang to arrange for the registration of the transfers in respect of the said share. The evidence of PW1 – Siow Kwen Sia, called as a handwriting expert, concluded that the signature appearing in exh. P3a differed from that of the usual signature of the deceased appearing in the 19 specimen signatures given.

The Defendant's Case

Shortly put, it is the defence of the defendant that it was a *bona fide* purchaser for value without notice and that it had no knowledge of the alleged forgery. It was also contended that the defendant was the third purchaser and no knowledge of the forgery should be attributed to it. It is unfortunate however that the main players in the transaction are now dead, including David Wang.

The Issues

It is a common ground that in order for the plaintiff to succeed it must be proved that (i) the signature of the deceased, namely, Johnny Chiew Tet Ming in exh. P3a as a transferor was a forgery and thus fraudulent; and (ii) that if it was a forgery, the defendant had knowledge of it. The ancillary point is whether the subsequent registered owners could obtain and pass good title despite the forgery.

(1) Issue (i)

It is trite law that the standard of proof required where there is an allegation of fraud must be one of beyond reasonable doubt. In the case of *Chu Choon Moi v. Ngan Sew Tin* [1986] 1 MLJ 34 it was held by the then Supreme Court that:

> … fraud whether made in civil or criminal proceedings must be proved beyond reasonable doubt and cannot be based on suspicion and conjecture (*Narayanan v. Official Assignee, Rangoon* AIR [1941] PC 93; *Saminathan v. Pappa* [1981] 1 MLJ 121). Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The degree of proof need not reach certainty but it must carry a high degree of probability. What it means is that the evidence adduced is such that the Court believes its existence or a prudent man considers its existence probable in the circumstances of the particular case. If such proof extends only to a possibility but not in the least a probability, then it falls short of proving beyond reasonable doubt. (See "proved" at section 3 of the Evidence Act, 1950 and *Liew Kaling & Ors v. Public Prosecutor* [1960] MLJ 306.)" per Syed Agil Barakbah SCJ at page 38.

However, the matter before me is an allegation of forgery. And it was held by the Court of Appeal that the standard of proof required should only be on the balance of probabilities, a standard generally applied in civil cases. In *Boonsom Boonyanit v. Adorna Properties Sdn Bhd* [1997] 3 CLJ 17 his Lordship Gopal Sri Ram said this at p. 34:

> The proof of forgery in civil proceedings, unlike fraud, comes within the general rule earlier adverted to. That it need only be established on a balance of probabilities was laid down as long ago as 1855 by the Privy Council in *Doe D Devine v. Wilson* [1855] 14 ER 581, where Sir John Patteson, when delivering the advice of the Board said (at p. 592):
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> > Now, there is a great distinction between a civil and a criminal case, when a question of forgery arises. In a civil case, the onus of proving the genuineness of a deed is cast upon the party who produces it, and asserts its validity. If there be conflicting evidence as to the genuineness, either by reason of alleged forgery, or otherwise, the party asserting the deed must satisfy the jury that it is genuine. The jury must weigh the conflicting evidence, consider all the probabilities of the case, not excluding the ordinary presumption of innocence, and must determine the question according to the balance of those probabilities. In a criminal case, the onus of proving the forgery is cast on the prosecutor who asserts it, and unless he can satisfy the jury that the instrument is forged to the exclusion of reasonable doubt, the prisoner must be acquitted.

On appeal the Federal Court approved the standard of proof required for forgery as expounded by the Court of Appeal, that is, on the balance of probabilities. (see: *Adorna Properties Sdn. Bhd. v. Boonsom Boonyanit @ Sun Yok Eng* [2001] 2 CLJ 133.

It is also pertinent to note that where an allegation is one of forgery the facts and circumstances in relation to the part played by a party or parties alleged to have been involved in the forgery should be taken into account.

Further, when considering whether forgery has been established:

> (I)t is not proper to attempt making any conclusion on the genuineness of a signature in a document by comparing two similar handwriting without resorting to the opinion of a handwriting expert who is specialised in this field ... It is insufficient to rely on the opinion of an ordinary witness and the more so an interested party" per Syed Agil Barakbah SCJ at page 36 in *Chu Choon Moi v. Ngan Sew Tin (supra)*.

As regards the evidence of a witness where such witness may be found to be unreliable, "it does not mean that all his evidence had to be rejected. The trial court could still consider and accept any part of his evidence which are corroborated by independent evidence, documentary or otherwise" per Syed Agil Barakbah SCJ at p. 37 in *Chu Choon Moi v. Ngan Sew Tin (supra)*.

The plaintiff in an attempt to establish this first issue called several witnesses, including a handwriting expert in the person of PW1, a Forensic Scientist by the name of Mr. Siow Kwen Sia. Now, in considering the evidence of PW1 this court has to note that generally his evidence should be admitted without any requirement of corroboration. In *Dr. Shanmuganathan v. Periasamy s/o Sithambaram Pillai* [1997] 2 CLJ 153 his Lordship Anuar CJ (Malaya) said thus, *inter alia* at p. 182-186:

> (I)t is trite law that the principal object of expert evidence is to assist the court to form its own opinion. An expert should give his reasons. The court is the final arbiter, not the experts or eyewitness ... The learned judge should have considered the reasoning given by the expert and with that assistance arrived at the conclusion. In failing to do so the learned judge had abdicated his function. The learned judge is entitled to reject the evidence but not before considering such evidence. The evidence of the expert is admissible and relevant to the fact in issue properly placed before the learned judge. The learned judge ought to consider all such evidence that is before him prior to arriving at a finding on the issue. Only after such due consideration been given could he come to a finding. In the case before us, the learned judge did not consider the evidence of PW1 at all. The learned judge did not determine the issue of the forgery.

In the present case there was no challenge by the defendant either on the qualification of PW1 as an expert or on the method adopted in coming to his conclusion. The basic complaints in fact were that PW1 failed to give evidence to cover the situation where a person might have purposely signed differently from his usual signature and that no specimen was produced for the month of October 1975 when the alleged forgery purportedly took place. Meanwhile, it was the testimony of PW1 that in considering the signature appearing in exh. P3a purportedly to be that of the deceased he compared it with 19 specimen signatures of the deceased from the years 1968 to 3rd August 1978 (exh. P8-18). It was the opinion of PW1 that the signatures in those 19 specimens were written by the same hand. In respect of the signature in exh. P3a however, he was of the opinion that it was of different authorship. In fact PW1 prepared a report that was duly admitted as exh. P7.

Accordingly, in view of the total absence of any form of challenge against the evidence of PW1 as to his expertise and method adopted to examine the disputed signature and having considered the overall testimony of PW1, I have no reason to reject his evidence as a whole. Indeed the defendant did not deem it necessary to call its own expert to counter the finding of PW1.

In respect to the complaints of the defendant I find that they were addressed in the course of cross-examination and re-examination of PW1. It was his answer that the person signing purportedly the signature of the deceased was not one that was trying to disguise a signature. As to the absence of a specimen for the month of October 1975 I do not think that it is fatal as the period covered by the specimen signatures is more than sufficient to remove any probable doubt. The vital point is that PW1 testified that the author of the purported signature of the deceased in exh. P3a was not trying to disguise a signature and that the author of the 19 specimen signatures differed from that of the purported signature of the deceased in exh. P3a.

The next relevant witness is PW6 – Leong Fook Ngen, the 2nd defendant. It was the evidence of PW6 that when he met David Wang and asked about the signatures on exh. P3a purportedly to be that of the deceased and the attesting witness who was also dead, the latter told him that he (David Wang) had fabricated and forged both the signatures. PW6 also gave the background as to why David Wang was indeed interested in having the whole of the said land. It was for development and that PW6 would get one shop lot as his share. In fact it was the testimony of PW6 that he was supposed to get two shop lots since he had also put down a deposit of RM30,000 by way of contra account with the defendant for a second lot.

Learned counsel for the defendant heavily criticized the credibility and reliability of PW6 in that he seemed to remember only those that he wanted to. In particular learned counsel said that PW6 failed to mention to the Police about the forgery when he was interviewed earlier on and only mentioned it in his Statutory Declaration (exh. P25) and in his statement to the court (PW6A). It was also highlighted by learned counsel for the defendant that PW6 seemed to have three versions of the transaction pertaining to the transfer of the said share, in particular in connection with the payment of RM30,000. The first version was that PW6 was supposed to have been paid the sum of RM30,000 by the defendant plus a shop lot but none materialised. The second version was that the defendant paid the sum but PW6 returned it as a deposit for a shop lot. And this version came out when PW6 was shown a receipt. The third version was that the sum of RM30,000 was the consideration for the said share. Learned counsel submitted that if there was any truth in what was said by PW6, then there was no explanation for his failure to demand from the defendant for the said sum and the shop lot.

As regards what transpired between PW6 and David Wang learned counsel said that it should not be admitted as such statement was hearsay. And it was also contended that there was discrepancy between the evidence of PW6 and that of PW2 in connection with the time taken in the transfer of the said share. Finally learned counsel said that the whole purpose of PW6 in testifying was to help the plaintiff.

Having considered the testimony of PW6 as a whole I did find discrepancies. But I do not think they are serious enough as to warrant this court to reject his evidence in entirety. There are portions of his testimony in particular as to the background fact of the impugned transaction that the defendant could have rebutted but failed. And there are portions of the evidence of PW6 that are well corroborated by events not disputed by the defendant. For instance, there was a mention by PW6 of a person by the name of Tan Sung Jung who was present when Liew Ah Tai signed as a transferee in exh. P3a. The defendant could have denied this event by calling the said Tan Sung Jung. Further, there was also no challenge to the assertion of PW6 of the pivotal role played by David Wang in the transfer of the said share. At any rate the defendant could not have done so as it was not disputed that David Wang was at all times in possession of the title deed in respect of the said land. Indeed exh. P3a had to go through the hand of David Wang and it was him who made the arrangement with PW2 to lodge the transfer with the Lands and Surveys, Kota Kinabalu. As regards the statement heard by PW6 from David Wang I do not think it should be strictly taken as hearsay since it was PW6 himself personally who heard it. Further I agree with learned counsel for the plaintiff that such a statement could amount to an admission on the part of David Wang. And the other surrounding circumstances that gives

credence to the testimony of PW6, namely, that there was fabrication, is on the reference to the payment receipts. The defendant relied quite heavily on the existence of the receipts as indication that the deceased indeed signed on exh. P3a. However on the production of those receipts they did not tally at all with the execution of the said document. They referred to other matters such as plan printing fees. And the names mentioned therein were not even any of the parties to the transaction. There lies a glaring situation that lends support to the account of PW6 as to how the event unfolded at the Land Office in Lahad Datu in 1984 and the representation or assurance given by David Wang.

Accordingly I am inclined to accept the unrebutted as well as those portions of the evidence of PW6 that were corroborated by the documents and circumstances adduced during the hearing of this case. As a whole I would say that portions of the evidence of PW6 should be helpful in determining whether there was forgery of the signature of the deceased.

The testimonies of PW2 – Chong Hen Fui and PW3 – Chong Shin Leong mainly touched on the transfers involving the said share. It was the evidence of PW2 that he handled all the three transfers involving the said share in 1984 and 1985 on the instruction of David Wang. The transfers of the said share were from the deceased to Liew Ah Tai and then from Liew Ah Tai to PW6 – Leong Fook Ngen and finally to the defendant. According to PW2 he only dealt with David Wang in all the transfers. As for the evidence of PW3 it was more to confirm that PW2 acknowledged receiving in 1984 title deeds of which among them was the title deed of the said land as recorded in the Dispatch Book of the Lands and Surveys Department.

PW4 – Alexander Yong and PW7 – Bernard Liew Chan Min testified relating to the production of the receipts (exh. P26) referred to in exh. P3a.

Finally the evidence of PW5 – Elizabeth Chiew Yun Fung who is a daughter of the deceased dealt with the signature in exh. P3a. According to this witness she lived with her father for about five years and whilst with him she helped him in his business. She said that she was familiar with the signature of her father and having seen the purported signature in exh. P3a this witness said that it was not the signature of her father. PW5 also described how she first stumbled on the matter after the demise of her father. She said that the said share was listed as part of the estate of the deceased. And in 1985 she and her brother went to Lahad Datu to meet their grandfather with the view to ask him to look for a developer of the said share. However before the plan could be done her grandfather told her that the said share was no longer in the name of the deceased but that of Liew Ah Tai. Not happy with such information PW5 returned to Sabah in 1986 to lodge a Police report. And in 1987 she instructed her then solicitors to commence legal action.

This witness also said that during her stay with her father between 1974 and 1978 she noted that David Wang always came to see her father to persuade him to sell the said share to him. But her father did not want to sell it. It was also disclosed by this witness that in 1979 her late father had the said share valued by a property valuer of Messrs CH Williams Talhar & Wong (Sabah) Sdn.

For the Defendant DW1 – William Wang was called to testify. He said that he is now the Managing Director of the defendant after the death of his father, David Wang, on 13 February 1996. And this witness said that before the transfer of the said share to the defendant his late father had 13/40 share in the said land. As such the title deed was in his possession. For that reason all transactions had to go through his father. And PW2 was relied upon as the agent of his father who wanted to ensure that the deed would be returned to him.

Having considered the evidence adduced as a whole on this issue (i) I am of the view that the facts and circumstances in this case as can be elicited inevitably point to one conclusion in that there was forgery of the purported signature of the deceased appearing in exh. P3a. As to the time and by whom I do not think that is crucial to determine. The evidence of PW1 including his report lends support to such a finding. I have no reason to doubt the probative value of the evidence of this witness. I am also fortified by the fact that there appears to be no serious challenge coming from the defendant to the allegation that the purported signature of the deceased in exh. P3a was forged. Further, I have no reason not to accept that PW1 is an expert and duly qualified to give such evidence.

One circumstance that helps to clear any doubt is the attempt to show that the necessary fees had been paid by quoting the receipt numbers. However it had been shown that those mentioned receipts did not support such assertion. Those receipts did not indicate that they were related to the transfer of the said share. And the evidence of PW6 meanwhile showed that it was David Wang who assured him that all the requirements were met thereby giving the appearance that the signatures of the deceased and the attesting witness were genuine. Obviously someone did forge the purported signature of the deceased and even went to the extent of getting false receipt numbers so as to camouflage the wrongdoing. Incidentally I am inclined to accept the evidence of PW6 in respect of what transpired during his meeting with David Wang at the land office in Lahad Datu in connection with the transfer of the said share to Liew Ah Tai. I do not think this witness would go to the extent of inventing a story that is prejudicial to his interest to begin with. He has all to gain should the said share remains with the defendant since according to him there

was a promise of one shop lot. Further, I am not prepared to accept that David Wang was involved only due to the fact that he was holding the title deed of the said land as DW1 might want this court to believe. I tend to accept what was said by PW6 as to the background and the reason for David Wang to be interested in acquiring the said share. Indeed this aspect of the evidence is in tandem with the evidence of PW5 regarding the constant persuasion of David Wang for the deceased to sell the said share. It was not a case of David Wang having totally no interest in acquiring it.

Although I am not obliged in law to conclude based on what PW5 had said regarding the purported signature of the deceased in exh. P3a, having considered it in the light of the other evidence adduced I am of the view that her evidence should be given some weight in that she must be taken to be familiar with the signature of the deceased having seen it before during her stay with him. And it was the evidence of PW5 that the purported signature of the deceased in exh. P3a was not his. I have no reason not to accept such assertion.

Accordingly I am satisfied on the balance of probabilities that the purported signature of the deceased as found in exh. P3a is the result of a forgery. And as there was then a transfer of the said share using the forged signature of the deceased, I am satisfied beyond reasonable doubt that there was fraudulent conduct perpetrated in such transfer.

(2) Issue (ii)

The next issue is whether the defendant knew of the forgery on or before the transfer of the said share. In this case the knowledge can be imputed in the Managing Director of the defendant at the material time, namely, David Wang.

From the evidence adduced in this case there was no dispute of the involvement of the said David Wang in the transfers of the said share, to wit, first from the deceased to Liew Ah Tai and then from Liew Ah Tai to Leong Fook Ngen and finally from Leong Fook Ngen to the defendant. Of course the explanation of DW1 was that David Wang was holding the title deed of the said land being the holder of 13/40 share thereof. However from the testimony of PW6 I find the role of David Wang in making the transfer possible was quite perplexing. And I heard no other assertion that the documents needed for the transfer of the said share were prepared by another person or that David Wang had nothing to do with them. Indeed it was never put to PW6 in cross-examination that the purported signature of the deceased in exh. P3a was secured by him or that he was responsible in passing the same to David Wang. In fact the assurance made by David Wang to PW6 on the arrangement for the transfer of the said share, namely, that no one would

be in trouble since both the deceased and the attesting witness were dead rendered a clear knowledge of David Wang on the status of the signatures of the deceased in exh. P3a. It is of course unfortunate that David Wang could no longer come to Court to tell his version of the story since he passed away on 13 February 1996. But I think the surrounding circumstances emanating from the evidence adduced in connection with the transfer of the said share would be more than sufficient to lead to a conclusion that David Wang must have known or ought to have known of the falsity of the purported signature of the deceased in exh. P3a.

The evidence of PW2 also showed the extent of the role played by David Wang in the transfer of the said share. PW2 met no one else other than him. It was obvious that the conduct of David Wang in relation to the transfer of the said share could not be described as anything else other than of a person who was very keen to acquire the same.

Accordingly, it is my finding that the defendant through the knowledge of its then Managing Director, David Wang, must have known or ought to have known that the purported signature of the deceased in exh. P3a was forged.

(3) Issue (iii)

This issue is a question of law, namely, whether a forged instrument of transfer conveys any title, interests or rights to subsequent purchaser upon registration. To begin it should be appreciated that under the Sabah Land Ordinance there is no provision on indefeasibility of title on registration similar to that found in the National Land Code. This has been affirmed in the case of *Borneo Housing Mortgage Finance Bhd v. Times Engineering Bhd.* [1996] 2 CLJ 561.

> Next, "it is axiomatic that a forged instrument is null and void and of no effect (see *Kreditbank Cassel GMBH v. Schenkers Ltd* [1927] 1 KB 826 at p 834, per Bankes LJ). It is not merely voidable. In the absence of an express statutory direction to the contrary, no rights whatsoever arise in favour of one who acquires title under a void instrument. The extent to which statute has intervened in the case of a registration of title obtained by means of a forged instrument is a matter that we will deal with separately at a later stage" per Gopal Sri Ram in *Boonsom Boonyanit v. Adorna Properties Sdn Bhd (supra)* at page 44.

Perhaps it should be noted here that the Federal Court reversed the decision of the Court of Appeal in the above case but it was on the basis of the proviso under sub-s. 340(3) of the National Land Code 1965, namely, a purchaser in good faith and for valuable consideration.

In the instant case I have found that the purported signature of the deceased in exh. P3a was forged and that the defendant must have known or ought to have known of the forgery. Hence, the inevitable conclusion is that such instrument did not convey any title, interests or rights to the subsequent registered owner. As such Liew Ah Tai, Leong Fook Ngen and the defendant acquired no title, interests or rights in respect of the said share.

It was also submitted that the defendant was a *bona fide* purchaser for value without notice of the forgery. In so far as the notice is concerned I have already discussed it hereinabove and made a finding accordingly. The remaining point is whether the defendant was a *bona fide* purchaser and for valuable consideration. Here lies the evidence of PW6 who said that he was promised RM30,000 but never came. He also said that he was persuaded by David Wang to sign an acknowledgement receipt on the RM30,000 after the plaintiff had commenced this action on the representation by the former that it would prevent anyone from getting into trouble. David Wang promptly ignored PW6 after he had signed the same. According to PW6 he was also promised a shop lot as part of the consideration for the said share but to date nothing came out of it.

On the part of the defendant it could only rely on the acknowledgement receipt signed by PW6. However I am inclined to accept the explanation of PW6 on how the receipt came about. At any rate the fact that I have found the defendant to have knowledge or ought to have known of the forgery of the purported signature of the deceased renders the defendant no longer entitled to rely on the doctrine of *bona fide* purchaser and for valuable consideration. And I do not think the conclusion in *Adorna Properties Sdn Bhd v. Boonsom Boonyanit @ Sun Yok Eng* [2001] 2 CLJ 133 is of any help to the defendant since there the Federal Court relied on the said proviso of sub-s. 340(3) of the National Land Code 1965. There is no equivalent sub-section or proviso in the Sabah Land Ordinance. Moreover I am not satisfied on the balance of probabilities that the defendant has discharged its burden of proof as required by the said doctrine. (see: *Pekan Nenas Industries Sdn Bhd v. Chang Ching Chuen & Ors* [1998] 1 CLJ 793).

Conclusion

In view of the findings that I have arrived at hereinabove the irresistible conclusion is that the plaintiff has succeeded in establishing her case while the defendant failed in an attempt to substantiate its defence. As such, judgment should therefore be given in favour of the plaintiff and against the defendant. And since the original first and second defendants did not contest this action judgment should also be entered against them. Accordingly I hereby grant the plaintiff the following orders as finally prayed for, namely:

1. a declaration that the signature of Johnny Chiew Tet Ming in memorandum of transfer (exh. P3a) was a forgery;

2. a declaration that the interests subsequently registered as Memorial Nos. 30187763, 30188261 and 30192346 on CL 138488, Lahad Datu are null and void; and

3. that the Collector of Land Revenue cancels the said Memorial Nos. 30187763, 30188261 and 30192346 entered on the title deed CL 138488, Lahad Datu.

I am aware that the plaintiff initially prayed for damages for fraud. However, learned counsel did not pursue that item at the submission stage. At any rate I do not think he could have succeeded as I heard no evidence adduced to substantiate such a claim.

On the issue of costs I award it to the plaintiff against the defendant as well as the original first and second defendants to pay equally and to be taxed unless agreed.